

## CALIFORNIA STATE BOARD OF EQUALIZATION

## SUMMARY DECISION UNDER REVENUE AND TAXATION CODE SECTION 40

In the Matter of the Petition for Redetermination )

Under the Sales and Use Tax Law of: )

) Account Number SC OHA 100-269121

OCÉ FINANCIAL SERVICES, INC. ) Case ID 473623

) Oral hearing date: May 22, 2013

Petitioner )

)

## Representing the Parties:

For Petitioner: Appearance waived

For Sales and Use Tax Department: None

For Appeals Division: Jeffrey G. Angeja, Tax Counsel IV

LEGAL ISSUE 1

Whether adjustments are warranted for erroneously reported lease receipts.

FINDINGS OF FACT AND RELATED CONTENTIONS

Petitioner is an out-of-state retailer and lessor of commercial printers, copiers, and related products.<sup>1</sup> As herein relevant, petitioner determined that tax applied to its lease receipts from its California leases of tangible personal property (i.e., petitioner regarded such leases as qualifying as continuing sales and purchases<sup>2</sup>), and thus petitioner reported tax on a quarterly basis, measured by the lease receipts. Upon audit the Sales and Use Tax Department (Department) found that some of the transactions that petitioner reported as continuing sales and purchases were in fact sales under a security agreement at inception. For those transactions, the Department concluded that petitioner should have reported the full sales price during the quarter in which the sales were made. The

<sup>1</sup> It is undisputed that petitioner is a retailer engaged in business in the state in connection with leases of tangible personal property in this state (see Rev. & Tax. Code, § 6203, subd. (c)), and that petitioner has a tax collection obligation in connection with such leases (Rev. & Tax. Code, § 6203, subd. (a)).

<sup>2</sup> Generally, a lease of tangible personal property is a continuing sale and purchase for the duration of the lease, and tax is due on the rentals payable. (Rev. & Tax. Code, §§ 6006.1, 6010.1; Cal. Code Regs., tit. 18, § 1660, subds. (b)(2) & (c)(1).) With certain other exceptions not relevant here, this general rule applies unless the property is leased in substantially the same form as acquired by the lessor and the lessor has paid sales tax reimbursement or use tax measured by the purchase price of the property. (Rev. & Tax. Code, §§ 6006, subd. (g)(5), 6010, subd. (e)(5).)

1 Department compiled the total amount of such transactions, adjusted for the nontaxable sales (and  
2 other warranted reductions not at issue herein), and established an understatement of reported taxable  
3 sales. The Department also established a credit allowance for the measure of erroneously reported  
4 lease receipts.

5 On appeal petitioner contends that it is entitled to a greater allowance for erroneously reported  
6 lease receipts. During the appeal process petitioner requested additional time in which to provide  
7 documentation in support of additional adjustments, and we allowed such time; but petitioner provided  
8 no additional documentation.

9 APPLICABLE LAW

10 California imposes sales tax on a retailer's gross receipts from the retail sale of tangible  
11 personal property in California unless the sale is specifically exempt from taxation by statute. (Rev. &  
12 Tax. Code, §§ 6012, 6051.) When the sales tax is inapplicable, use tax may be imposed measured by  
13 the sales price of tangible personal property purchased from a retailer for storage, use or consumption  
14 in California. (Rev. & Tax. Code, §§ 6011, 6201, 6401.) The use tax is imposed on the person  
15 actually storing, using or otherwise consuming the property. (Rev. & Tax. Code, § 6202.) A retailer  
16 engaged in business in California is required to collect this tax from its customers and remit it to the  
17 Board. (Rev. & Tax. Code, §§ 6202, 6203.) Where a contract designated as a lease binds the lessee  
18 for a fixed term and the lessee is to obtain title at the end of the term upon completion of the required  
19 payments or has the option to purchase the property for a nominal amount, the contract will be  
20 regarded as a sale under a security agreement from its inception. (Cal. Code Regs., tit. 18, § 1660,  
21 subd. (a)(2)(A).) The option price is regarded as nominal if it does not exceed \$100 or 1 percent of the  
22 total contract price, whichever is the lesser amount. (Cal. Code Regs., tit. 18, § 1660, subd. (a)(2)(A).)  
23 The measure of tax for such sales at inception is the aggregate total of the payments required under the  
24 governing contract of sale. (Rev. & Tax. Code, §§ 6011, 6012.)

25 As relevant here, excess tax reimbursement is charged when reimbursement is computed on a  
26 transaction which is not subject to tax. (Cal. Code Regs., tit. 18, § 1700, subd. (b).) If a person who  
27 has collected excess tax reimbursement on a transaction fails to refund it to the customer from whom it  
28 was collected, the excess tax reimbursement shall be offset against any tax liability of the taxpayer on

1 the same transaction, on a transaction-by-transaction basis, and any excess tax reimbursement  
2 remaining after the offset must be refunded to the customer or paid to the state. (Cal. Code Regs., tit.  
3 18, § 1700, subd. (b)(4).) Tax reimbursement can be offset against the tax liability of the taxpayer  
4 whether the liability was satisfied by paying sales tax reimbursement to a vendor, paying use tax to a  
5 vendor, or paying use tax to the state. (Cal. Code Regs., tit. 18, § 1700, subd. (b)(4).)

#### 6 ANALYSIS & DISPOSITION

7 Here, petitioner's disputed transactions bound the lessees for a fixed term, and allowed the  
8 lessees the option to purchase the leased property for a nominal fee upon completion of the required  
9 payments. Petitioner does not dispute that the customers in the questioned transactions had the option  
10 to purchase the property for a nominal fee. Therefore, the transactions at issue are sales under a  
11 security agreement at inception.

12 The amounts represented as tax or tax reimbursement collected on petitioner's rental stream  
13 constitute excess tax reimbursement because petitioner's rental stream is nontaxable based on our  
14 finding that the questioned recorded "lease" transactions are actually sales at inception (i.e., these  
15 transactions are not "true leases" under the Sales and Use Tax Law). The Department properly offset  
16 that excess tax reimbursement against petitioner's tax liability in connection with the leases that  
17 qualify as sales at inception. (See Cal. Code Regs., tit. 18, § 1700, subd. (b)(4).) As mentioned above,  
18 we allowed petitioner additional time during the appeal process in which to provide documentation in  
19 support of additional adjustments, but petitioner provided no additional documentation. In the absence  
20 of such evidence, we find no additional adjustments are warranted.

#### 21 LEGAL ISSUE 2

22 Whether relief of interest is warranted.

#### 23 FINDINGS OF FACT AND RELATED CONTENTIONS

24 Petitioner requests relief of interest on the basis that it remitted tax timely on a quarterly basis,  
25 measured by its lease receipts, and it did not know that the transactions in question were sales at  
26 inception.

1 APPLICABLE LAW

2       The imposition of interest is mandatory. (Rev. & Tax. Code, § 6482.) As relevant herein,  
3 Revenue and Taxation Code section 6593.5 provides, in pertinent part, that the Board, in its discretion,  
4 may relieve all or any part of the interest imposed when the failure to pay the tax is due in whole or in  
5 part to an unreasonable error or delay by an employee of the Board acting in his or her official  
6 capacity. (Rev. & Tax. Code, § 6593.5, subd. (a)(1).) An error or delay shall be deemed to have  
7 occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act  
8 by, the taxpayer. (Rev. & Tax. Code, § 6593.5, subd. (b).) A person seeking relief of interest must file  
9 a statement under penalty of perjury setting forth the facts on which the claim for relief is based.

10 ANALYSIS & DISPOSITION

11       Here, petitioner has not claimed that there was unreasonable error or delay by the Department,  
12 and our review of the record reveals no evidence of such error or delay. Accordingly, we find no basis  
13 on which to recommend relief of interest.

14 ORDER

15       It is hereby ordered that the petition be denied and that the matter be redetermined without  
16 adjustment.

17       Adopted at San Francisco, California, on September 10, 2013.

18  
19 Jerome E. Horton, Chairman

20 Michelle Steel, Member

21  
22 Betty T. Yee, Member

23  
24 George Runner, Member

25  
26 Marcy Jo Mandel, Member\*

27  
28 \*For John Chiang, pursuant to Government Code section 7.9.